

APPELLATE COURT NO. 72966

IN THE COURT OF CRIMINAL APPEALS

OF THE STATE OF TEXAS

REINALDO DENNES

Appellant,

VS.

THE STATE OF TEXAS,

Appellee.

Judge Jim Wallace, Presiding

Volume 2 of 39 Volumes

Cause No. 750,313
January 13, 1997
January 16, 1997

Sharon Kay Cook
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED IN
COURT OF CRIMINAL APPEALS
FEB 25 1998
Troy C. Bennett, Jr., Clerk

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Volume 3

Pre-trial Motions

January 13, 1997

January 16, 1997

1 CAUSE NO. 750,313

2 STATE OF TEXAS IN THE 263RD DISTRICT COURT

3 VS. OF

4 REINALDO DENNES HARRIS COUNTY, T E X A S

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6
7 A P P E A R A N C E S:

8 For the State: Mr. Don Smyth
Mr. Mark Vinson
9 Assistant District Attorney
Harris County, Texas

10 Defendant Reinaldo Dennes: Mr. Wendell Odom
11 Defendant Jose Albert Dennes: Mr. George Parnham
Attorneys at Law
12 Houston, Texas

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14
15 BE IT REMEMBERED that upon this the 13th

16 day of January, A. D. 1997, the above entitled and
17 numbered cause came on for motions before the

18 Honorable Jim Wallace, Judge of the 263rd District
19 Court of Harris County, Texas; and the State appearing
20 in person and the Defendant appearing in motions and
21 by counsel, announced ready for hearing, and all
22 preliminary matters having been disposed of, the
23 following proceedings were had, viz:

1 MR. PARNHAM: This morning, I believe you
2 denied a motion for continuance and this is a motion
3 for continuance was filed on Reinaldo Dennes, as well
4 as Jose Albert Dennes, both defendants. And I would
5 like to put on the record some requests I have for
6 discovery as it relates to the motion for continuance.

7 We have filed two requests for notice on
8 the part of the State with intent to offer extraneous
9 conduct, one at the guilt-innocence phase and the
10 other at the punishment phase of the trial. Both,
11 according to the Penal Code, were filed on
12 December 4, 1996.

13 Then on December 10, 1996, we filed a
14 follow-up motion for discovery of relevant extraneous
15 matters that may be presented by the State under
16 Article 37.031 and 37.07 of the Texas Code of Criminal
17 Procedure. Previously, on June 11, 1996, we had filed
18 a general motion for discovery and inspection
19 requesting that we be placed on notice of any
20 extraneous offenses that would be offered in the case.

21 The purpose of the Motion for Continuance,
22 and the other concern is, we have got less than 30
23 days that we are set to go to trial and we have been
24 orally informed of certain extraneous offenses that
25 may be offered at either the guilt-innocence or the

1 punishment stage of this trial. And we have been told
2 in a very general matter what those offenses are and
3 as a result of not having any written notice or being
4 told in specifics of what the offenses are, and by
5 that, I mean date, time, county, witness, or any
6 details but we have been told generally there may be
7 an aggravated robbery or there may be a solicitation
8 of a witness case. Because we don't have any
9 knowledge of those facts, we have been unable to
10 investigate any of those alleged offenses. And as
11 such, we are in a position of asking the Court at this
12 point, to rule on our motions. One of them doesn't
13 require ruling, I don't think. One of them is a
14 request that we filed with the State but in an
15 abundance of caution, we ask the Court to rule on our
16 general motion for discovery and/or on our motion for
17 discovery relevant to the extraneous matters so we can
18 be placed on notice of extraneous matters so we can
19 prepare a defense.

20 THE COURT: Mr. Vinson, what says the
21 State?

22 MR. VINSON: I think the motion on
23 extraneous matters was served on Mr. Rosenthal. I
24 spoke to defense this morning and I told him what I
25 will do. I will get with him and try to find out

1 exactly what extraneous there is on each defendant he
2 was speaking of. But in the presentation just now, I
3 realized he said dates, time, places. I guess the
4 asundry and all that.

5 In punishment, I'm not required to give
6 that. The only thing I am required to do is subpoena
7 the witnesses. The State has the burden to prove
8 beyond a reasonable doubt that offense was committed
9 so the jury may determine if they want to give this
10 consideration in punishment. I don't know that I have
11 to give all the details of an extraneous, if it is
12 extraneous, in proving up guilt, yes, but I can just
13 give him the aggravated robbery, 1977, or whatever.

14 THE COURT: So you are saying the State is
15 not going to the offer any extraneous in the case in
16 chief in the guilt or innocence phase.

17 MR. VINSON: Not to my knowledge and,
18 certainly, if that did come to pass while we are
19 picking this case, even though we are starting on the
20 10th, this case is not going to trial that day. And I
21 take it, this motion is an ongoing motion for
22 discovery, and if at any time we discover that we
23 would be using it in the guilt, we will put them on
24 notice immediately and the Court could make a proper
25 ruling.

1 THE COURT: As to the punishment then?

2 MR. VINSON: But right now I don't see any
3 reason, based on my understanding of the case, I don't
4 see any reason for an extraneous other than the
5 offense was committed during the course of the alleged
6 crime and everything surrounding that alleged
7 incident.

8 THE COURT: Okay. So you are saying the
9 State doesn't have any plans to offer any extraneous
10 other than what are part and parcel of this offense.

11 MR. VINSON: That's correct, the plan and
12 sequence, the shooting of the weapon off, that will be
13 actually the firing of the weapon, I mean, the design
14 of the weapon, the shooting of the security guard,
15 those allegations, all of those will be offered in the
16 case and they are aware of that.

17 THE COURT: Okay. Anything else to put on
18 the record on that?

19 MR. ODOM: To clarify on one matter, we
20 are requesting the reasonable notice of any
21 extraneous that may be offered on punishment as well
22 as under 37.071. He said he knows of no law that says
23 he has to give us exact dates or the exact
24 information. We, at least, believe we are entitled to
25 be placed on notice, in writing, enough information

1 that we can defend against any false allegations that
2 the State may be intending to offer in the punishment
3 stage.

4 MR. VINSON: We will do it consistent with
5 what we have done in the past, Your Honor, and that is
6 the witnesses will be subpoenaed and I generally have
7 always broken it down to punishment, witnesses that we
8 have in the case in chief and then always put a
9 subpoena in with the punishment witnesses and it's
10 identified as such and there, give the witness' name,
11 address, and the defense then is made aware. If we
12 have offense reports, I'll let them see the offense
13 reports and they can gather all the information they
14 have there from the offense report. And I have not
15 sat there and edited out and we plan to offer this but
16 we will give them all the information from the offense
17 report. I'll give them the date, county, and
18 allegations.

19 THE COURT: And I want that done-- at
20 least, let's make it two weeks prior to the date of
21 trial.

22 MR. VINSON: Okay.

23 THE COURT: Or earlier; at the very latest
24 two weeks prior but my direction would be as soon as
25 the State decides it is going to offer any

1 extraneous on punishment, you are under obligation
2 to notify the defense but no later than 15 days.

3 MR. ODOM: To clarify, we request more
4 than what Mr. Vinson is giving in our motion and I
5 assume that is denied.

6 THE COURT: That will be denied.

7 MR. ODOM: We also have some motions that
8 that Mr. Vinson and I have talked about and there may
9 be at least a partial, if not a complete agreement to.
10 One is a Brady motion entitled motion for production of
11 evidence favorable to the accused and we have a list
12 of items that we view as favorable, if the State has
13 such evidence, and I believe that Mr. Vinson maybe is
14 at least partially agreeable to that motion, if not
15 completely agreeable to that motion.

16 THE COURT: If you will go over with Mr.
17 Vinson and normally indicate on your copy what is
18 agreed versus what is not agreed and then I will rule
19 on anything that you disagree on.

20 MR. ODOM: Okay.

21 MR. VINSON: Well, I think it's
22 self-explanatory. Brady would be any evidence that we
23 would have to show that this defendant did not commit
24 this offense as favorable to him or that someone else
25 committed it. And I'll follow that right down to the

1 law, according to the case law. But I have nothing
2 there. I haven't stumbled on nothing at this time.

3 THE COURT: You are under an obligation to
4 do so.

5 MR. VINSON: It's a continuing obligation.

6 THE COURT: As soon as, if at any time you
7 find such information, you are under an obligation.

8 MR. ODOM: To make sure we don't waive
9 anything, we believe with the recent Supreme Court
10 case, the United States versus Wilkinson, that we are
11 entitled to go beyond evidence that merely shows that
12 Mr. Dennes did not commit the crime, to wit, evidence
13 that impeaches a witness on the part of the State,
14 evidence that shows sloppy police work on the part of
15 the State, evidence that tends to be favorable to the
16 defendant in many ways can be viewed as Brady even
17 though it falls short of the standard that Mr. Vinson
18 has declared that being as evidence that shows that he
19 is not guilty of the offense. We believe that it is
20 not nearly that narrow, that doctrine, but it's
21 evidence that is favorable to the defendant, it would
22 be the doctrine and especially that recent case from
23 the Supreme Court.

24 MR. VINSON: I am not going to police the
25 police, Your Honor. I think that he has the duty to

1 cross examine, and I'll operate consistent with Brady.
2 I'm not to go out and reinvestigate the case for Mr.
3 Odom's satisfaction.

4 THE COURT: Certainly, if you have a
5 witness for the State was testifying and the State is
6 aware that their testimony is tainted or somehow
7 impeachable, or something of that nature, I certainly
8 want you to make that available.

9 MR. VINSON: That's consistent with Brady.

10 MR. ODOM: In Wilkinson, the defense
11 certainly can't police the police and it is his
12 obligation.

13 We have two other motions, one is a motion
14 to list witnesses and the other is a motion to compel
15 the preservation of rough notes. I know that we are
16 not entitled to view the rough notes of any police
17 officer at this point. What I request is that they be
18 preserved in the event, during the trial, we do become
19 entitled to look at those notes, to wit, there is a
20 dispute over certain issues, that they at least be
21 preserved so we can do that in the future.

22 THE COURT: It will be granted.

23 MR. ODOM: The second one is a motion to
24 list witnesses. I understand that it is Mr. Vinson's
25 policy to list his witnesses. Some prosecutors don't

1 always do that. In an abundance of caution, we
2 request that witnesses be listed so we be placed on
3 notice as to who the State will call.

4 THE COURT: That will be granted.

5 Is there a time frame on that?

6 MR. ODOM: I don't have a time frame.

7 MR. VINSON: We could have that filed -- I
8 should say we could have that filed, Your Honor,
9 within the next couple of weeks, we should be able to
10 file that.

11 THE COURT: Okay. Let's say then within
12 three weeks of the date of trial, no later than.

13 MR. VINSON: Now, three weeks of the date
14 of trial, this means that we would have to file it
15 next week.

16 THE COURT: The date of trial?

17 MR. VINSON: What are we talking when we
18 say date of trial?

19 THE COURT: I am talking about the actual
20 start of testimony.

21 MR. VINSON: Okay.

22 THE COURT: And that would be subject to
23 any new discovery obviously in this case, which you
24 discovered additional witnesses, you would be obliged
25 to notify the defense.

1 MR. VINSON: Only if they are not rebuttal
2 witnesses.

3 THE COURT: Certainly.

4 MR. VINSON: I don't plan on rebuttal
5 witnesses.

6 MR. ODOM: By that, three weeks prior to
7 the weeks going and following the testimony.

8 THE COURT: The commencement of testimony
9 is what I meant.

10 MR. ODOM: We have a motion for discovery
11 and inspection, and I will get together with Mr.
12 Vinson to see if works that out.

13 THE COURT: If you don't have any
14 disagreement and note it and if you disagree, we will
15 take it point by point.

16 MR. PARNHAM: On the behalf of Jose Albert
17 Dennes, George Parnham, his attorney, I say we, Mr.
18 Odom and I, in representation of our respective
19 clients, have filed separate motions to adopt the
20 motion of the co-defendant. Specifically on issues
21 that are not necessarily antagonistic to either the
22 defense nor in conflict with any theory as far as the
23 defense is concerned, the motions that have previously
24 been addressed by Mr. Odom we would ask the Court to
25 permit Mr. Dennes to adopt.

1 THE COURT: Certainly.

2 MR. PARNHAM: Not on the merits but also
3 the argument of counsel as well as the rulings of the
4 Court relating to Brady, relating to any extraneous
5 offense notice and relating in general to the motion
6 for discovery.

7 THE COURT: Let the record reflect that.

8 Also, do we anticipate juror
9 questionnaires? Are we going to have jury
10 questionnaires?

11 MR. PARNHAM: Your Honor, I have filed
12 motions that I am not prepared to go forth with today;
13 however, in conjunction with a request that we have a
14 pre-trial hearing sometime this week, I will have
15 available for the Court a questionnaire that I have
16 already prepared and submitted for your consideration.

17 THE COURT: This will be a questionnaire
18 by you?

19 MR. ODOM: I also have a motion to adopt
20 Mr. Dennes' motion.

21 THE COURT: So we will do one
22 questionnaire obviously for both of them. And you
23 will have that for me this week.

24 MR. PARNHAM: I would like to have that
25 tomorrow.

1 THE COURT: I would like to start on it as
2 quickly as possible. Is it pretty standard?

3 MR. PARNHAM: It is. Your Honor, in
4 conjunction, for instance, the voir dire and the list
5 of witnesses, I would assume that some of the
6 questions that would be posed to the jury panel will
7 be their knowledge of individuals that the State and
8 the defense anticipates to be called during the course
9 of the trial. And I am wondering if we could have a
10 list of the State's witnesses that will appear both in
11 the guilt or innocence and in the punishment sometime
12 prior to the day before we begin jury selection so we
13 may intelligently quiz the prospective jurors, to
14 determine whether or not that juror knows any of the
15 witnesses, and if so, if their knowledge of that
16 particular witness might in any way impact their
17 decision on the evidence presented.

18 THE COURT: I think my ruling covers that,
19 if they have got to give you that list no later three
20 weeks prior to the commencement of the actual start of
21 testimony. That's well in advance of the date we
22 actually commence voir diring the jury because we are
23 here on the 13th and we are not going to start that
24 process until the 10th. We are a month away from that
25 now.

1 MR. VINSON: That's what he is saying,
2 Judge. We have to file that next week.

3 THE COURT: Okay. Let's say we are going
4 to start on the 10th of February. I would certainly
5 think in advance of that you would have a basic list
6 to provide them ahead of time as to a list of
7 witnesses. We are talking about almost a month's
8 time, just short of a few days, so, Mr. Vinson, if we
9 start this on the 10th, which is a Monday, if sometime
10 on the 3rd, which is the first Monday in February, I
11 would think that you could provide to the defense your
12 additional list of witnesses.

13 MR. VINSON: Can I do this, Your Honor,
14 and this way I can make sure the bases are covered.
15 I'd just like to state the way we do business as
16 usual. I file all my subpoenas with the clerk's
17 office and once with the clerk's office, that's notice
18 to the defense.

19 THE COURT: You will file that in advance
20 of February 3rd?

21 MR. VINSON: Yes. I will file with the
22 clerk's office.

23 (Off-the-record discussion held.)

24 MR. PARNHAM: We have filed -- before we
25 get to that, there was some discussion concerning the

1 return of seized property, specifically the property
2 that was secured as a result of the execution of a
3 search warrant issued out of Judge Godwin's Court for
4 the premises of the business that supposedly belonged
5 to the co-defendant Ray Dennes. It is my
6 understanding, and I talked to Mr. Smyth on Friday,
7 that the State proffered to us the possibility that
8 the partner of the complainant in this case will be
9 permitted to go to HPD and to determine what, if any,
10 item obtained as a result of that search in his
11 opinion came out of the business of the co-defendant
12 Mr. Ray Dennes. I informed Mr. Smyth that was
13 absolutely agreeable with me. He told me he would try
14 to get those arrangements made.

15 THE COURT: You said the partner of the
16 complainant?

17 MR. PARNHAM: Yes.

18 THE COURT: We will go to HPD and see if
19 any of that came out of the property of the deceased.
20 You meant the deceased?

21 MR. PARNHAM: But that stuff we are
22 talking about was seized out of.

23 THE COURT: I understand that. I
24 understand that.

25 MR. PARNHAM: The State has no problem

1 with that?

2 MR. VINSON: That's right.

3 MR. PARNHAM: This presents another issue
4 that we, I'm sure, can resolve if, in fact, there is
5 an item or items that the partner determines -- at
6 least makes an opinion that the item came out of the
7 deceased's property, then I assume that we will be
8 noticed or will have some notice from the State as to
9 the particular item it is well in advance.

10 THE COURT: I think we ought to categorize
11 that we agree what is not involved versus what is.

12 MR. PARNHAM: By way of absolutely the
13 upmost caution, I take it, that the statement by Mr.
14 Vinson that there would be no extraneous activity in
15 his opinion that would come in during guilt or
16 innocence would also go to any item of evidence that
17 was seized from either Mr. Dennes, my client, Albert
18 Dennes, or Mr. Ray Dennes that may be contraband from
19 another highjacking or robbery.

20 THE COURT: It sounds extraneous to me; is
21 that right?

22 MR. VINSON: Unless, you know, it has some
23 relevance or if they open the door.

24 THE COURT: Essentially if the door is
25 opened, but otherwise that's my understanding as well

1 as Mr. Parnham's.

2 MR. VINSON: If it is, this doesn't
3 necessarily mean --

4 MR. PARNHAM: We have filed a request to
5 have an ex parte hearing on some matters that are
6 relevant to the defense in this case.

7 THE COURT: Do you still think that is
8 relevant considering the conversation we had last
9 week? I thought we touched upon that a little bit.

10 MR. PARNHAM: No, sir.

11 THE COURT: It doesn't have anything to do
12 with the South African --

13 MR. PARNHAM: If it was plutonium, we
14 wouldn't have any platinum.

15 MR. PARNHAM: There are other matters,
16 Judge.

17 THE COURT: I certainly want the State --
18 has the State seen that motion?

19 MR. PARNHAM: Yes, sir, we've seen a copy.

20 THE COURT: Thursday, we can discuss that
21 and rule on that. But if we are going to have experts
22 and things of that nature, we need to get to it pretty
23 quickly.

24 MR. PARNHAM: There is one other matter
25 that, again, out of an abundance of precaution, when

1 we talk about notices as far as extraneous matters are
2 concerned and I understand that the whole
3 circumstances, i.e., relationship between the parties
4 and the activities of supposed activities of the
5 defendants in preparation and execution should be of
6 any matter made the basis of the indictment, what will
7 be judged during a court of time and as far as the
8 admissibility is concerned there is and I have been
9 told by Mr. Rosenthal and made this comment to Mr.
10 Vinson that at some point in time both individuals
11 were either suspects and/or targets of an
12 investigation relating to the conspiracy to commit
13 capital murder of a witness in this case.

14 Now, we haven't received anything in
15 writing on that but I can certainly see how it could
16 be argued that may be an end of it be part and parcel
17 that surrounds the admissibility in this case without
18 given written notice.

19 MR. VINSON: Are you talking about the
20 Rolex shooting?

21 MR. PARNHAM: Specifically we were
22 informed by Mr. Rosenthal and it was alluded to, for
23 instance, the father of the Dennes brothers may be a
24 suspect or a target in a conspiracy to commit capital
25 murder, as I understand it, of one of the witnesses

1 involved in this case. There was also a statement by
2 Mr. Rosenthal that the defendants in this case were
3 also going to be filed on for conspiracy to commit
4 capital murder of a witness in this case. And that's
5 all we have heard.

6 Now, I checked the computers and found
7 there was no case filed and talked to Mr. Vinson. He
8 didn't think there was going to be any case filed.
9 Mr. Rosenthal told me he did not file a case but there
10 is still this nebulous --

11 MR. VINSON: I'll check on that to see
12 because it could be an extraneous offense on
13 punishment, so I'll check on that.

14 THE COURT: Let's make sure, for the
15 record, I kind of agree that would be part and parcel
16 of the same offense. And if offered, it would be of
17 an extraneous nature and that previously I gave you
18 adequate --

19 MR. ODOM: For the record, so they will
20 understand what we are talking about, up until this
21 day, there was another prosecutor, Mr. Rosenthal, who
22 was lead prosecutor in this case. After the first of
23 the year, Mr. Rosenthal is no longer the lead
24 prosecutor in the case. Mr. Vinson is the lead
25 prosecutor in this case. Anybody reviewing this

1 record would not understand what we are talking about.

2 MR. VINSON: He is still in the office.

3 MR. PARNHAM: Just a couple of other
4 items, to give the Court adequate notice, there will
5 be filed a motion for severance in this case. We have
6 discussed this with Mr. Vinson, discussed it in the
7 hallway from time to time with Mr. Rosenthal. Just so
8 the Court is aware, we will try to get it on file. We
9 may not be able to have a hearing on this coming
10 Thursday.

11 THE COURT: You know my predisposition
12 unless adequate cause or reason, my view at this time
13 would be to deny that.

14 MR. ODOM: We understand.

15 THE COURT: Thank you very much.

16 (Court adjourned for the day.)

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1 CAUSE NO. 750,313

2 STATE OF TEXAS IN THE 263RD DISTRICT COURT

3 VS. OF

4 REINALDO DENNES HARRIS COUNTY, T E X A S

5
6 A P P E A R A N C E S:

7 For the State: Mr. Mark Vinson
Mr. Don Smyth
8 Assistant District Attorneys
Harris County, Texas

9
10 Defendant Reinaldo Dennes: Mr. Wendell Odom
Defendant Jose Albert Dennes: Mr. George Parnham
Attorneys at Law
11 Houston, Texas

12
13 BE IT REMEMBERED that upon this the 16th
14 day of January, A. D. 1997, the above entitled and
15 numbered cause came on for motions before the
16 Honorable Jim Wallace, Judge of the 263rd District
17 Court of Harris County, Texas; and the State appearing
18 in person and the Defendants appearing in person and
19 by counsel, announced ready for hearing, and all
20 preliminary matters having been disposed of, the
21 following proceedings were had, viz:

1 THE COURT: We are looking at the motion
2 to proceed ex parte, and I have asked the State for
3 their position on that particular motion.

4 MR. VINSON: You know, the only thing,
5 Judge, he is requesting funds to assist in their
6 defense. I have no objection to, you know, whatever
7 the Court sees fit in the funds that he needs for the
8 defense, if he needs funds for a defense. It looks
9 like these two attorneys were hired, you know, by the
10 family so the question of funds, how does that
11 become --

12 THE COURT: That's the first issue. Since
13 these are both retained, I think there is an issue
14 about having retained counsel and coming to the State
15 saying they are paying us but we want the State to pay
16 for all the expert witnesses and I'm not quite sure.

17 MR. ODOM: Well, the clients themselves
18 are not paying us. The clients are not in a position
19 to pay us.

20 THE COURT: Right.

21 MR. ODOM: Their assets primarily have
22 been seized. They are not in a position. Primarily
23 the mother and father of our clients have been paying
24 us to represent them but our clients are indigent, and
25 we intend to file a pauper's oath, if the Court needs

1 to do so in that regards. That doesn't mean, however,
2 the family hasn't stepped forward, which they have
3 done, to pick an attorney of their choice but our
4 clients remain indigent as they did before. If
5 anything, the State had a windfall that ordinarily
6 where they have to pay for an attorney, not have to
7 pay for one, not because of the clients because of the
8 clients' family.

9 THE COURT: Let's speak to the latter --
10 is this what you want to go on the ex parte, the type
11 of expert we are looking for?

12 MR. PARNHAM: The need for expert
13 witnesses and obviously that would dictate the type of
14 expert witness that we are requesting. And in order
15 to establish the need for the expert witness, we would
16 feel compelled to request the ex parte hearing so that
17 the Court may rule upon that in that it impacts the
18 defense that both the Dennes brothers foresee it as
19 the defense to these allegations.

20 THE COURT: Well, obviously this is unique
21 to me.

22 MR. VINSON: You, know, generally if a
23 person is going to allege that, they have got to give
24 the State some notice and then they go with the
25 experts. We understand that. I have not ever been a

1 party to an ex parte in a defensive issue. I have no
2 idea what kind of witnesses they are talking about.
3 Obviously they can't be talking about --

4 THE COURT: Well, I certainly don't want
5 to be in a situation where we spring surprises on
6 either side. If you have a defensive issue that needs
7 to be pursued and you need expert witnesses and expert
8 assistance, that's one thing. But to say we want to
9 do this in secrecy, and I am somewhat apprehensive
10 about proceeding along those lines.

11 MR. PARNHAM: I think what we are
12 concerned, and the Court alluded to this earlier,
13 based on the previous conversation we had relating to
14 the folks in South Africa and the folks in Canada,
15 these motions do not necessarily relate to those
16 issues; however, it is our position that we, as the
17 representatives of these defendants, are not compelled
18 either by statute or Constitutional law to reveal the
19 defense to the prosecution. It is our position that
20 if we have a proceeding, an initial proceeding, to
21 establish a threshold need to have witnesses and
22 experts appointed, and if that particular proceeding
23 is participated in by the State, it doesn't take a
24 rocket scientist to figure out the State is going to
25 be made available to the defense that we will proceed

1 with during the course of their case. And that's
2 simply the reason why we are asking for an initial
3 proceeding to show, first of all, the need and the
4 type of expert witnesses and the funds to secure those
5 witnesses so that we may defend our clients.

6 THE COURT: Well, I'm just not inclined to
7 grant an ex parte of this nature. If you are
8 requesting funds for an expert witness to develop a
9 defensive theory, then it ought to be such, you know,
10 we place that on the record, in front of the
11 participants of both the State and the defense. And
12 if it's such a critical nature, then it seems like we
13 would seek private funds to do that so you would not
14 have to reveal your defensive issue, and if you are
15 coming to me for monies to do that and, to me, it
16 ought to be an opening proceeding and the State ought
17 to be able to participate. That's my position.

18 MR. PARNHAM: Do we have any progress yet,
19 if I may ask Mr. Vinson, on the issue related to the
20 jewelry that was seized and whether or not there --

21 MR. VINSON: Yes. Mr. Smyth, in speaking
22 with him this morning, and he was here for a while
23 this morning, he has been working on that this week.
24 And he brought to my attention that the detectives who
25 are working on that have determined that some of the

1 jewelry -- I don't know to what extent -- but there
2 are some items there that are stolen that your client
3 does not have a right to possession or a question if
4 he has a right to possession of. So we were going to,
5 base on that, we was going to request that the Court
6 give us a little bit more time to let the detective go
7 through what they have over there. Apparently they
8 have been doing it this week, I guess, to see exactly
9 what they can determine is stolen and what is not.

10 MR. PARNHAM: Have they indicated they
11 were stolen out of the robbery made the basis of this
12 or other extraneous activities?

13 MR. VINSON: We had a very short
14 conversation because I was trying to do several
15 things, in speaking with him, I guess, this hearing,
16 and he made me aware there was discovered that some of
17 the items had been stolen.

18 MR. PARNHAM: Without identifying the
19 source?

20 MR. VINSON: Right. I was trying to do a
21 couple of things and I didn't want to go in any
22 detail.

23 THE COURT: It seems you and the State
24 need to go together and go over your motions and see
25 where you agree and where you disagree, see if you can

1 agree on some time frames that you can live with and
2 then come back and see me where you can agree on
3 certain requests, or if the time frame the State is
4 offering you is something you can't work it in, and I
5 can go on the record and set time requirements that
6 the State produce what I think should be produced and
7 to basically have a ruling on the record about all
8 these various motions. It seems like a waste of time
9 until you all go over there and see that you can agree
10 on A, B, C and not D, E or we don't agree on the time
11 frame. Let's get that done and it will save us a lot
12 of time, when we are up here, so I know specifically
13 what it is I need to make a ruling on without
14 generally having to be rambling through all these
15 motions and we do this expeditiously. If you want, to
16 me -- that's all up to you.

17 You need to meet and get that done and put
18 it on the record, as quickly as possible, what you are
19 requesting, what my rulings are, and if I give the
20 State some deadlines, we need to get that on the
21 record as quickly as possible to make sure the State,
22 as well as the defense, has adequate time to develop
23 the case in the time frame we have got.

24 MR. ODOM: Judge, I agree with that. I
25 would, however, like to put this on the record that

1 this morning I was informed for the first time that
2 the State would proceed against my client on the death
3 penalty in that they will not proceed on co-counsel's
4 client with the death penalty.

5 MR. VINSON: I haven't decided. I am
6 proceeding on your client first.

7 MR. ODOM: I'm sorry. They will proceed
8 on my client first, which is the gist of what I am
9 trying to say. And that is a surprise to me. That,
10 as was pointed out in the original bond hearing, when
11 a pre-trial release was submitted to the Court, the
12 finances that my client had, that my client is, for
13 all practical purposes indigent, that I have a family
14 member here today that will testify that any assets
15 that my client has are either seized or not available
16 to my client. That I have previously made a motion
17 for continuance because I didn't think I could be
18 ready to go to trial February 10th.

19 I re-urge the motion in light to have this
20 latest discovery based on the fact that I now find
21 myself in a position of, by myself, preparing for
22 trial instead of preparing for trial with co-counsel
23 on that date. And I would ask the Court to reconsider
24 the motion for continuance or to consider appointing a
25 co-counsel to sit with me during the trial, as is

1 customarily done in Harris County, when an indigent
2 client is charged with the death penalty because of
3 the tremendous amount of hours and tremendous amount
4 of research and discovery and effort that has to be
5 done in any capital case.

6 THE COURT: The motion for continuance is
7 denied. Come back in the morning and we will discuss
8 the issue of co-counsel.

9 Anything further that we need to take care
10 of today?

11 MR. PARNHAM: Two things: Based on our
12 observation, we would ask, for the record now, the
13 Court to set a deadline for a reply from the State
14 concerning the property seized, since this is germane
15 and, obviously, to the issue inasmuch as we are not
16 going to be permitted expert witnesses, if we are
17 financed by the State --

18 THE COURT: I didn't say that. We are not
19 going to proceed with an ex parte with your request
20 for expert witnesses financed by the State.

21 MR. PARNHAM: If, in fact, we can have a
22 deadline set by the Court for the State to inform us
23 concerning the property seized.

24 THE COURT: I don't see why that can't be
25 done post haste.

1 Is there any reason that can't be done
2 immediately?

3 MR. VINSON: They are working on that
4 immediately.

5 THE COURT: I want it done by Wednesday,
6 the 22nd.

7 MR. PARNHAM: The other thing is this:
8 If we could get in writing -- well, we have already
9 talked about the notices as far as the extraneous
10 offenses are concerned both to the punishment and to
11 the guilt or innocence.

12 THE COURT: I think we have it on the
13 record.

14 Anything further?

15 MR. PARNHAM: No.

16 THE COURT: And you are going to come back
17 to me, I assume, within a day or so and say we have
18 met, we are meeting, this is what we agree on, this is
19 what we can't agree on, or something, because, you
20 know, I am putting it on you gentlemen to get this
21 taken care, for what we need to place on the record,
22 and I don't want to be sitting here in two weeks and
23 we are still at the same point and the motions haven't
24 been resolved. I am instructing all of you to get
25 together quickly this coming week, and I want all of

1 these motion issues out of the way either with
2 agreements, my rulings and deadlines as to those
3 things that require deadlines for the State to
4 produce.

5 MR. PARNHAM: In matters relating, for
6 instance, to motions to suppress, motions to quash the
7 indictment, things of that fashion, are those matters
8 that the Court anticipates having heard during the
9 course of the case itself or will they be heard in
10 separate pre-trial?

11 MR. VINSON: I prefer that be done as
12 early as possible. If they have the motion to quash,
13 we can even address that tomorrow morning rather than
14 wait.

15 THE COURT: Address it and set it for a
16 hearing as quickly as possible and do both cases at
17 the same time in regards to the pre-trial motions.

18 MR. PARNHAM: I'll be here in the morning.

19 THE COURT: Thank you very much.
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